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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,036	09/19/2000	Nebojsa Ilic	13297/00002	5475

7590 12/28/2004

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EXAMINER	
LEITH, PATRICIA A	

ART UNIT	PAPER NUMBER
1654	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/665,036	ILIC ET AL.	
	Examiner	Art Unit	
	Patricia Leith	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *5-10,19-23,34,35 and 37-39* is/are pending in the application.

4a) Of the above claim(s) *35* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *5-10,19-23,34 and 37-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 5-10, 19-23, 34-35 and 37-39 are pending in the application.

Claim 35 was withdrawn from consideration as it is drawn to a non-elected species in the previous Office Action.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a previous Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5-7, 9, 10, 19-23 and 38-39 are newly rejected under 35 USC 103(a) as being unpatentable over Sal'kova et al. (1981).

Applicant's arguments are essentially moot in light of this new rejection. The teachings of Sal'kova et al. were keenly discussed in the previous Office Action. Sal'kova et al. did not specifically teach wherein the final product obtained from extracting the waxy layer from the apples was admixed with a pharmaceutical carrier.

It is noted that the term 'pharmaceutical carrier' is very broad. It is deemed that the term 'pharmaceutical carrier' can be drawn to water or oil for example.

One of ordinary skill in the art would have been motivated to admix the final product obtained from the extraction of Sal'kova et al. in order to dilute samples of apple extract for analysis.

Applicant argues that Sal'kova et al. did not teach that the extract obtained from the apples had an anti-viral effect. Again, it is deemed that because the process

disclosed by Sal'kova et al. for extraction of plant material is virtually identical to the method for obtaining the extract as found in the Instant specification, it is deemed that this property would have been inherent absent sufficient evidence to the contrary.

Claims 5, 9-10, 19-23, 34, 37 and 39 are newly rejected under 35 USC 103(a) as being unpatentable over Archer et al. (1971).

Applicant's arguments are essentially moot in light of this new rejection. The teachings of Archer et al. were keenly discussed in the previous Office Action. Archer et al. did not specifically teach wherein the final product obtained from extracting the waxy layer from the apples was admixed with a pharmaceutical carrier.

Again, it is deemed that one of ordinary skill in the art would have been motivated to admix the final product obtained from the extraction of Archer et al. with a carrier such as water or oil in order to dilute samples of the extract for analysis.

Applicant again argues that Archer et al. did not teach wherein the extract had anti-viral activity, and again it is pointed out that because Archer et al. disclosed virtually the same extraction procedure as found in the Instant specification, that the products would have been the same, or so similar that no discernable difference can be made. Considering the similarities of the extracts, it is deemed that they would possess the

same inherent characteristics and therefore display the same effects, especially absent evidence to the contrary.

Claims 5, 9-10, 19-23, 34,37 and 39 remain rejected under 35 USC 103(a) as being obvious over Archer et al. (1971) in view of McMurray (1992).

Again, Archer et al. did not specifically teach the incorporation of a pharmaceutically acceptable carrier to the final extracted product. As indicated supra, it would have been obvious to one of ordinary skill in the art to add water or oil to the final product in order to evaluate the final product.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

For the reasons set forth *Supra*, no claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia Leith
Primary Examiner
Art Unit 1654

12/23/04